No. 9/5/-84-6Lab/1377.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act)No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of M s Barara Co-operative Credit & Service Society Ltd., Barara (Ambala) :—

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 77 of 1984

between

SHRI ASHOKPAL SINGH WORKMAN AND THE MANAGEMENT OF MESSRS BARARA CO-OPERATIVE CREDIT & SERVICE SOCIETY LIMITED, BARARA (AMBALA)

Present :

Shri Rajeshwar Nath for the applicant.

Shri Janak Raj Sharma for the respondent.

AWARD

The Hon'ble Governor of Haryana in exercise of the powers conferred, —*vide* clause (d) of sub-section (i) of Section 10 of the Industrial Disputes Ac, 1947, referred the following dispute between Shri Ashokpal Singh workman and the management of Messrs Barara Co-operative Credit & Service Society Limited, Barara, Ambala. The terms of the reference are as under :—

"Whether the termination of services of Shri Ashokpal Singh workman was justified and in order ? If not, to what relief is he entitled to ?"

To trace out the history of dispute in hand between Ashokpal Singh workman and the management of Messrs Barara Co-operative Credit & Service Society Ltd., Barara (Ambala) briefly narrated the facts as alleged by the parties are as under :—

Shri Ashokpal Singh workman alleged that he was appointed as a Clerk-cum-Salesman by the respondent society on 8th November, 1970. He was placed under suspension on 2nd November, 1982 on false charges. He was served with a charge-sheet on 18th November, 1982 with the condition to furnish its reply within 15 days but due to illness applicant could not submit reply in time and prayed for extension of time. Respondent management without granting any extension and also without affording any opportunity to applicant of being heard he was terminated on 15th February, 1983. This termination order is illegal and in contravention of natural principal of justice as well as violative of Section 25(F) of the Industrial Disputes Act, 1947, so this order be declared null and void and award regarding his reinstatement with continuity in service and full back wages be passed.

Respondent contended that workman Shri Ashokpal Singh remained in the employment of the respondent. He did not deposit the sales proceeds of the fertilisers, in other words he embezzled the same. A charge-sheet was served upon the workman. He was required to submit his reply within 15 days, but workman failed to do so, he was terminated. The termination order is just and legal.

On the pleadings of the parties the following issues were framed :—

Issue No. 1 :

Whether service of applicant was legally terminated by respondent,—*vide* its order, dated 15th February, 1983; if not, its effect ? OPR.

Issue No. 2 :

Relief.

I have heard Shri Rajeshwar Nath for the applicant and Shri Janak Raj Sharma for the respondent. and have persued oral as well as documentary evidence placed on file. My issue wise findings are as under :—

Issue No. 1 :

Respondent management to justify its order of termination regarding the termination of services of Shri Ashokpal Singh workman examined Manager Shri Mohinder Singh as MW-1 who deposed that he has been authorised by the society to defend this case. Copy of resolution is Exhibit M-1, Copy of charge-sheet which was served upon the workman is Exhibit M-2. Vouchers regarding depositing of certain amounts by this worker in favour of the Society are Exhibit M-3 to M-6. Copies of inventories regarding consumers articles and fertilisers are Exhibit M-8 and M-1. Fertilizer bags were deficient in the stock. Price of the same was deposited by the workman Shri Ashokpal Singh,—*vide* Exhibit M-11. Due to the above embezzlement a notice was served upon the workman. Copy of the same is Exhibit M-12.

In cross-examination he stated that workman did not submit his reply regarding his charge-sheet. He prayed for extension of time. That prayer application is Exhibit A-1. In cross-examination he admitted that the Cash Book as well as Cash are to be handled by the Manager.

Workman Ashokpal Singh appeared as AW-1. He supported his case that due to his illness he could not furnish his reply of allegations levelled against him by the respondent within 15 days. He requested for extension of time. His request was turned down by the respondent. No notice of termination of services was issued or served upon him. No inquiry was held against him. Retrenchment Compensation amount was also not paid to him. Cash Book and Accounts aer being maintained by the Manager. Receipts of Sales of Fertilizers are also

being issued by the Manager Jagmal Singh and Cash was also accepted by him. Manager Jagmal Singh absconded with cash after making embazzlement of the cash of the society. The allegations levelled against him contained in charge-sheet Exhibit M-2 are basically wrong and false. He also stated that the fertilizer which he sold to the customers, sales proceeds of the same was handed over to the Manager Jagmal Singh. But he later ran away with that cash and the same was again deposited by him in the bank. Bank receipt is Exhibit M-6.

Shri Janak Raj Sharma mainly argued on the point that Shri Ashokpal Singh workman made embezzlement of the Society funds in other words sales proceeds of the fertilizer bags, so he committed mis-conduct The charge-sheet which was served upon him was also not rebutted by him (workman) so he was rightly terminated. Learned Counsel placed reliance on AIR -1983 Vol. II (Labour & Industrial Dispute Cases) NOC 145 (Delhi), Para-C in which it was observed that workman indulge in physical fighting with co-worker, so services of the workman who was at fault were terminated. but in this case in hand the facts are entirely different. Ashokpal Singh did not indulge in any fighting. He has clearly submitted that the sale proceeds was handed over by him with Manager Jagmal Singh. Later failed to deposit in bank when he was made scape goat for the same. He again deposited that amount in the bank.

Shri Janak Raj Sharma also drawn my attention towards AIR 1972 (SC) Page 1071, in that case applicant of leading evidence was denied to the management to prove the mis-conduct of the worker. So their Lordship observed that the denial of offence on applicant to lead evidence was not justified.

On the other hand the Ld. el. for the workman Shri Rajeshwar Nath drawn my attention towards 1979 (Labour & Industrial Cases-499) B.M. Gupta V. State of West Bengal. In this judicial pronouncement it was observed that non-compliance of with Section 25 (F) retrenchment of the worker is void *ab-initio* employee must be re-instated-grant of other relief is in-valid. At page 505 para 8, it was further observed that Section 25(F) of the Industrial Disputes Act, 1947 is mandatory. Failure to comply with said condition precedent makes the order of retrenchment invalid and in operative of law.

In view of the above evidence and case laws referred there to after giving thoughtful consideration to the matter in controversy between the parties, I am of the considered view that first of all that management was found to consider sympathetically the request of extension of time to the workmen for filing his reply regarding the allegations contained in the charge-sheet but it was not done. Secondly he should have been given an opportunity to lead defence evidence as well as of being heard, but no such opportunity was afforded to workman by the respondant society.

It clearly means that no proper inquiry was held against the workman. Secondly no notice regarding termination of services of the workman was given to him. Thirdly, no retrenchment compensation was given to him. Fourthly, no notice in the prescribed manner served upon the appropriate Government.

Moreover in this case workman Shri Ashokpal Singh has clearly stated that sales proceeds of the fertilizers used to be deposited by him with the Manager and the said Manager Jagmal Singh had absconded with the cash and embezzled the funds of the society. It was admitted by MW-1 that Cash Book Accounts are being maintained and handled by the Manager. He also stated that the previous salesman has also resigned from the services of the society.

Conduct of workman Shri Ashokpal Singh appears to be above board that a receipt of charge-sheet and to meet out the allegations levelled against him regarding embezzlement of soceity funds. He deposited Rs. 3830 in the bank on 14th Feburary, 1983 while his services were terminated on 15th Feburary, 1983 without any justification.

Accordingly, I think that respondant management has miserably failed to discharge the onus of the issue. Hence this issue is decided in favour, of the workman and against the respondant society.

Issue No. 2 (*Relief*)

For the foregoing reasons and on the basis of my findings on issue No. 1, I order the re-instatement of the workman Shri Ashokpal Singh with full back wages and all other benefits which he would have been entitled to while being in service. I pass my award regarding the dispute in had accordingly.

Dated the 31st January, 1985.

(V. P. CHAUDHARY),
Presiding Officer,
Labour Court, Ambala.

Endorsement No. 294, dated 4th Feburary, 1985.

Forwarded (four copies) to the Financial Commissioner & Secretary to Government, Haryana, Labour and Employment Deptt., Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

(V. P. CHAUDHARY),
Presiding Officer,
Labour Court, Ambala.